

# DECISION



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THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-203742.2

DATE: September 15, 1981

MATTER OF: Technical Food Services, Inc.

## DIGEST:

1. Absent finding of nonresponsibility, below-cost bid provides no basis for challenging award of Government contract.
2. GAO generally will not review contracting agency's affirmative determination of responsibility or, in case of small business found nonresponsible, Small Business Administration's decision whether to issue certificate of competency. In addition, size status of small business is determined conclusively by SBA.

Technical Food Services, Inc. protests the award of a contract to any of the seven lowest bidders under solicitation number DABT 47-81-B-0159, issued by Fort Jackson, South Carolina. This was a total small business set-aside. None of the allegations made are subject to the review of our Office; we therefore are dismissing the protest.

The protester first alleges that the low bidders cannot perform satisfactorily at their offered prices. Technical Food Services indicates that it will require more hours than the incumbent contractor has furnished and will cost more than the amounts bid to provide the military dining services specified.

As we have frequently stated, unless a prospective contractor is found nonresponsible, a below-cost bid, or buy-in, provides no basis for challenging an award. Forte, Inc., B-203041, May 19, 1981, 81-1 CPD 388. If the Army finds a below-cost bidder responsible, which it must do before awarding any contract, this would

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constitute an affirmative determination of responsibility. Our Office does not review such determinations in the absence of a showing of fraud or an alleged failure to apply definitive responsibility criteria. Id. Neither exception is present here.

On the other hand, if the Army finds a small business which has submitted a below-cost bid nonresponsible, as with every other nonresponsibility determination involving a small business, it must refer the matter to the Small Business Administration (SBA), which conclusively determines the responsibility question by issuing or refusing to issue a certificate of competency. Our review is limited to cases involving fraud or bad faith. Burgess, Inc., B-203603, June 30, 1981, 81-1 CPD 547.

In addition, Technical Food Services alleges that one of the low bidders has defaulted on five recent projects and, through ownership by the same family, is affiliated with another firm. These, too, are matters of responsibility and, under the rules outlined above, our Office generally will not review them. See International Business Investments, Inc., B-202164.2, June 8, 1981, 81-1 CPD 459; Transco Security, Inc. of Ohio, B-200470, April 15, 1981, 81-1 CPD 287.

Finally, Technical Food Services alleges that four of the low bidders are large businesses, and thus would not be eligible for award of a contract set aside for small business. Under 15 U.S.C. 637(b) (1976), the SEA conclusively determines size status for Federal procurements, Transco Security, Inc. of Ohio, supra, and any challenge to the size status of a small business must be made according to SBA procedures, rather than in the context of a bid protest.

Since this protest falls within that category in which it is clear, from the initial submission, that we would not review the allegations made, we have not requested a report from the contracting agency. International Logistics Group, Ltd.--Reconsideration, B-202819.2, June 30, 1981, 81-1 CPD 544.

The protest is dismissed.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
Acting General Counsel